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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

STATE OF ALABAMA,
Petitioner,

v.

RICHARD LYNG, SECRETARY OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE,

and

MARY PHILLIPS, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

In an effort to raise the nutritional level of low income households, Congress created the Food Stamp Program (7 U.S.C. § 2011, *et seq.*), which provides for the distribution of federal food stamps to eligible households for their use in purchasing food. In accordance with a written agreement with the United States Secretary of Agriculture, the State of Alabama began participating in the Program in 1974. Since then, the Program has grown tremendously within Alabama to the point where over 12% of the state's population now receive food stamps. In 1985, Congress amended the Food Stamp Act to prohibit states from participating in the Program and thus denying benefits to otherwise eligible households if state or local sales taxes are collected within the state on purchases of food made with food stamps. Alabama has a four percent state sales tax collected on all food sales. As a result of this amendment, Alabama must either relinquish its right to receive over $11.5 million in annual state sales tax revenue or prevent over 12% of the state's population from receiving food stamps worth $287 million a year. The question presented for review is:

> May Congress enact legislation under the authority of the Spending Power of the United States Constitution which coerces the states to relinquish their right to collect sales taxes on transactions within the states?

LIST OF PARTIES

The parties to the proceedings in the Eleventh Circuit Court of Appeals were Petitioner, State of Alabama, and Respondents Richard Lyng as Secretary of the United States Department of Agriculture, Mary Phillips on behalf of her household, the Alabama Council on Human Relations, Inc., an Alabama non-profit corporation, and the National Anti-Hunger Coalition.

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STATE OF ALABAMA,

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v.

RICHARD LYNG, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE,

and

MARY PHILLIPS, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner, State of Alabama, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in these proceedings on March 2, 1987.

OPINIONS BELOW

The opinion of the court of appeals affirming the judgment of the district court is reported at 811 F.2d 567 (11th Cir. 1987). The opinion and judgment are attached hereto as Appendices A and D, respectively.

The opinion and judgment of the district court are attached hereto as Appendices B and C, respectively.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 1987 (see Appendix D). This Petition for a Writ of Certiorari is filed within 90 days after that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. CONST. art. I § 8, cl. 1. (Appendix E)

2. U.S. CONST. amend X. (Appendix F)

3. 7 U.S.C. § 2013(a) Use of Coupons; Redeemability.

> Subject to the availability of funds appropriated under section 2027 of this title, the Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligibile households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, *except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this chapter.* The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.
>
> (Emphasis added by italicizing the language added by the 1985 amendment.)

STATEMENT OF THE CASE

In this action, the State of Alabama ("Alabama") filed suit in the district court under 28 U.S.C. § 1332 for declaratory and injunctive relief against Richard Lyng, Secretary of the United States Department of Agricul-

ture, ("Secretary") challenging a 1985 amendment to the Food Stamp Act which provides that a state may not participate in the Food Stamp Program if either state or local taxes are collected within the state on purchases of food made with food stamp coupons (Section 1505, Food Security Act, Public Law 99-198, amending 7 U.S.C. § 2013). Mary Phillips, on behalf of her household, the Alabama Council on Human Relations, Inc., and the National Anti-Hunger Coalition were allowed to intervene as defendants.

The Food Stamp Program was created by Congress under 7 U.S.C. §§ 2011, *et seq.* to "promote the general welfare, to safeguard the health and well-being of the nation's population by raising levels of nutrition among low income households," 7 U.S.C. § 2011. The Food Stamp Act charges the Secretary with formulating a plan to implement and administer the Program so that eligible households may receive benefits. The cost of all benefits are borne by the federal government. States which choose to assist in administering the Program are reimbursed by the federal government for a portion of the cost of administration. Pursuant to a written contract with the Secretary of Agriculture, executed in accordance with the Act, Alabama, acting as the Secretary's agent, has assisted the federal government in administering the Food Stamp Program.

During 1986, approximately 527,000 individuals in Alabama received approximately $287 million in food stamp benefits. The total cost of administering the Program in Alabama in 1986 was approximately $37 million, with Alabama's share being approximately $18 million. The State of Alabama imposes a non-discriminatory four percent sales tax on all food purchases in the state including purchases made with food stamps. In 1986, state sales taxes on food purchases made with food stamps were approximately $11.5 million. Alabama used the revenues from state sales tax exclusively to defray Alabama's cost of administering the Food Stamp Program.

Alabama claimed that the challenged amendment (Public Law 99-198) is unconstitutional because, among other things, it abridges Alabama's sovereign power to tax which is protected by the Tenth Amendment to the United States Constitution and it exceeds the Spending Power of Congress under Article I, Section 8 of the United States Constitution.

Defendants filed a motion to dismiss, which the district court granted on August 26, 1986. In granting the motion, the district court found that the Food Stamp Act requires participation by the states as a prerequisite to recipients within the states being eligible for food stamp benefits. The district court also found that the restriction of the states' power to tax, was not unreasonable and did not violate the Tenth Amendment. On appeal, the Eleventh Circuit Court of Appeals affirmed the district court's judgment and for grounds incorporated the opinion of the district court.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW RAISES AN IMPORTANT QUESTION INVOLVING A CONFLICT BETWEEN THE CONGRESSIONAL SPENDING POWER AND STATES' RIGHTS UNDER THE TENTH AMENDMENT WHICH THIS COURT HAS NOT PREVIOUSLY CONSIDERED—MAY CONGRESS USE ITS SPENDING POWER TO INTERFERE WITH THE STATES' SOVEREIGN POWER TO TAX.

I. The 1985 Amendment To The Food Stamp Act Represents The Greatest Intrusion Ever Through The Use Of Congressional Spending Power Into State Sovereignty.

This case represents the first instance where this Court has been called to resolve a confrontation between Congress' use of its Spending Power and the right reserved to the states under the Tenth Amendment of the United

States Constitution to tax transactions within a state's sovereign domain. A 1985 amendment to the Food Stamp Act (Section 1505, Food Security Act, Public Law 99-198, amending 7 U.S.C. § 2103(a)), provides as a prerequisite for a state's participation in the Food Stamp Program and the receipt of food stamp benefits by eligible households within the state, that the state not collect a sales tax on food purchases made with food stamps. As shown below, this amendment is the greatest intrusion ever of Congress' use of the Spending Power into state sovereignty and calls for a fresh review of the balance between Congress' power to provide for the general welfare of the nation and the right of the states under the Tenth Amendment to govern matters of state concern.

The Tenth Amendment provides that powers which are not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states. These states' rights are protected from congressional interference. In *Fry v. United States*, 421 U.S. 542, 95 S.Ct. 1792, 44 L.Ed.2d 363 (1975), this Court recognized that the Tenth Amendment prohibits Congress from exercising its powers "in a fashion that impairs the states' integrity or their ability to function effectively in a federal system." *Id.* 421 U.S. at 547, n.7. From the pronouncements of Alexander Hamilton in *The Federalist Papers* throughout the history of this country, the states' right to tax has been recognized as an indispensable and necessary function of state government and an attribute of state sovereignty. *See, The Federalist Nos. 32 and 33* (A. Hamilton); *Nathan v. Louisiana*, 8 Howard 73, 12 L.Ed. 992 (1850); *Lane County v. Oregon*, 7 Wall. 71, 19 L.Ed. 101 (1869); *Union Pacific R.R. Co. v. Peniston*, 18 Wall. 5, 21 L.Ed. 787 (1873). So long as a state's tax does not fall on the United States or upon an instrumentality closely aligned with the United States, the state tax is protected from congressional interference by the Tenth Amendment. *United States v. New Mexico*,

455 U.S. 720, 102 S.Ct. 1373, 71 L.Ed.2d 580 (1982). The tax which Congress is restricting through the Amendment to the Food Stamp Act does not fall on the United States nor its instrumentalities. Rather, the tax is imposed in a non-discriminatory manner upon all purchases of food or other items regardless of the status of the purchaser and regardless of whether or not the purchase is made with food stamps or currency.

The authority by which Congress is restricting the states' right to tax in this case, Article I, Section 8, Clause 1 of the United States Constitution, commonly referred to as the Spending Power of Congress, provides, in pertinent part, as follows: "Congress shall have the power . . . to provide for the . . . general welfare of the United States." The extent of the power granted to Congress under the Spending Power and how this power affects the sovereignty of the individual states has been the subject of much litigation and discussion.[1]

From its early interpretations of Congress' reach of authority under the Spending Power, this Court has cautioned that this authority is restricted by the rights reserved to the states under the Tenth Amendment. This Court, however, has never attempted to define such limits, and Congress has been allowed to reach further and further into the states' domain to such a great extent that the protection of the Tenth Amendment must be reexamined.

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[1] Rotunda, *The Doctrine of Conditional Preemption and Other Limitations on Tenth Amendment Restrictions*, 132 U. Pa. L. Rev. 289 (1984).

Alfange, *Congressional Regulation of the "States Qua States": From National League of Cities to EEOC v. Wyoming*, 1983 Sup. Ct. Rev. 215.

Comment, *Toward New Safeguards on Conditional Spending: Implications of National League of Cities v. Usery*, 26 Am. U.L. Rev. 726 (1977).

In *United States v. Butler*, 297 U.S. 1, 56 S.Ct. 312, 80 L.Ed 477 (1936), this Court took the first step in finding that the Spending Power is not limited by the specific grants of power contained in Article I, Section 8 of the Constitution. 297 U.S. at 72. This Court also ruled, however, that the Tenth Amendment provided a check on Congress' Spending Power, and prevented Congress from invading matters of state concern. In that case, a key provision of the Agricultural Adjustment Act of 1933 was held to be unconstitutional because it invaded the rights reserved to the states by the Constitution: "at best, it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the state." 297 U.S. at 72. The following year, this Court narrowed the force of the Tenth Amendment as applied in *Butler*. *See Steward Machine Co. v. Davis*, 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed 1279 (1937). In *Steward*, a private taxpayer challenged a federal excise tax which allowed a 90% credit for state unemployment taxes. In order to obtain the credit against the federal tax, the state had to enact unemployment compensation legislation to impose taxes under the state program. A key question was whether the condition imposed by Congress was coercive, in which event it would be held to constitute an unconstitutional intrusion of Congress' Spending Power into state autonomy.

For purposes of this case, it is important to note that in *Steward*, the state voluntarily passed the required legislation and, therefore, the private taxpayer could not effectively argue undue influence. Indeed, this Court upheld the federal act, noting that the statute did not call for a surrender of powers "essential to their [states'] quasi-sovereign existence." 301 U.S. at 593. This Court noted, however, that the Spending Power had its limits.

In *Steward*, this Court observed that a critical inquiry into whether a federal act was unduly burdensome is whether the act operates as a weapon of coercion which

destroys or impairs the autonomy of the state. 301 U.S. at 586. Exactly where Congress' limit lies is unclear, but this Court's observation on that point is significant: "We do not fix the outermost lines. Enough for present purposes that wherever the line may be, the statute is within it. Definition more precise must abide the wisdom of the future." 301 U.S. at 591.

Since *Steward*, the reach of Congress' Spending Power has continued to expand. In *Oklahoma v. United States Civil Service Comm'n*, 330 U.S. 127, 67 S.Ct. 544, 91 L.Ed 794 (1947), this Court upheld a section of the Hatch Act that made the states' receipt of certain federal grants-in-aid conditional upon the limitation of political activities of state officials whose salaries were paid in whole or in part with federal funds. In short, this Court ruled that Congress "has the power to fix the terms upon which its money allotments to states shall be disbursed." 330 U.S. at 143. The decision has led to Congress increasingly attaching different and varying conditions to grant-in-aid programs. However, again, as in *Steward*, the Court declared that the Spending Power was not without limitation.

Although this Court has continued to declare that the reach of Congress' Spending Power is limited, no precedent has been established which defines that limit in any factual circumstance. *See, Lawrence County v. Lead-Deadwood School Dist.*, 469 U.S. 256 at 270, 105 S.Ct. 695, 83 L.Ed.2d 635 (1985) (Congress cannot impose conditions under the spending clause which exceed an "independent constitutional bar"); *King v. Smith*, 392 U.S. 309 at 333, n.34, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968) (There is, of course, no question that the federal government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the states shall be disbursed. . . .); *Fullilove v. Klutznick*, 448 U.S. 448, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980); *Lau v. Nichols*,

414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974). In fact, the undersigned has been unable to find any reported case in which any court has found that an exercise by Congress of the Spending Power exceeded its limits. Moreover, of all the cases found, none involved a condition attached by Congress under the Spending Power to restrict the state's right to tax within its own domain.

In view of the ever-increasing reach of the Spending Power, it is important to remember the concerns expressed by the dissenting justices in *Steward.* They foresaw the danger of Congress expanding its power under the Spending Clause: "By the sanction of this adventure, the door is open for progressive inauguration of others of like kind under which it can hardly be expected that the state will retain genuine independence of action." 301 U.S. at 610 (Justice McReynolds). "The threat implicit in the present encroachment upon the administrative functions of the states is that greater encroachments, and encroachments upon other functions, will follow." 301 U.S. at 616 (Justice Southerland). The prophesy of these justices has never been more true than as shown by the case at bar. The wisdom of this Court is needed to establish the limits of the Spending Power under the facts wrought by the 1985 amendment to the Food Stamp Act.

II. The Amendment To The Food Stamp Act Coerces The States To Relinquish The Right To Tax.

In *Steward Machine Co., supra,* this Court established that an act of Congress under the Spending Power which operates as a weapon of coercion which destroys or impairs the autonomy of the state and which intrudes "upon fields foreign to its function" is unconstitutional. 301 U.S. at 586. The amendment to the Food Stamp Act represents a new type of coercion—monetary influence—that previously has been given little attention. The threat of the loss of important federal benefit programs can be,

and in this case has been, used to undermine state autonomy.

In the decision below, the court of appeals held that the Food Stamp Program is a voluntary federal-state cooperative program which requires an agreement to participate on the part of the state in order for eligible households within the state to qualify for benefits.[2] It has often been said that cooperative federal-state grant-in-aid programs are voluntary and that if a state does not want to comply with one of the conditions for receiving federal monies, the state always has the option to not participate in the program. However, the dramatic increases in the amount of federal monies flowing to the states and their citizens through these programs has created a new sword of coercion as illustrated by this case.

Now more than ever, Congress possesses the capability of bringing extraordinary coercive pressure to bear on the states by attaching conditions to programs which have become vital to the states and their citizens. A state's dependency on a grant-in-aid, as illustrated by the development and growth of the Food Stamp Program in Alabama, can be exploited by Congress to its own advantage and to the detriment of the state. Unrestrained, this opportunity for exploitation can lead to the destruction of state autonomy.

The value of food stamps issued in Alabama for the fiscal year ending September 30, 1974, was approximately $68 million. Since that time, the program has steadily grown as shown by the increasing value of food stamps

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[2] Alabama contended that the Food Stamp Program is purely a federal program in which eligible households throughout the nation may qualify for benefits regardless of whether or not the state chooses to assist in the administration of the program. Alabama contended, therefore, that Congress could not impose conditions on the states in order for eligible households to receive benefits. For purposes of the above argument, however, Alabama assumes that the program is a cooperative federal-state program.

issued in Alabama during the following years: 1978—$104 million; 1982—$280 million; 1986—$287 million. The number of individuals receiving food stamps in Alabama increased from approximately 330,000 as of September 30, 1974, to 527,000 as of September 30, 1986. The population of the State of Alabama is approximately 4,000,000.

From its inception, the Food Stamp Program did not prohibit the imposition of sales taxes on purchases of food made with food stamps. To help administer the Program and to promote its development, the Alabama Legislature, in 1978, required that five percent of the value of food stamp coupons issued in the state be used to pay the administrative costs of implementing the Program. *See, Ala. Code* § 40-23-35 (1975). As a result, all state sales taxes collected on food stamp purchases in Alabama goes directly to benefit eligible households.

From a purely economic perspective, the amendment gives the state the choice of either giving up approximately $11.5 million in annual state taxes or giving up $287 million a year in federal benefits for its citizens. Under these circumstances, Alabama does not have a realistic choice; it must give up the $11.5 million in taxes. Over the years, this Program has become vital to the health and security of over 12% of Alabama's population. Indeed, it is easy to predict that any state under similar circumstances would feel forced to sacrifice state autonomy in order to preserve a program that had become a lifeline to a substantial portion of its citizens. At some point, Congress' power to attach conditions to such programs must be checked.

In *Pennhurst State School and Hosp. v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), this Court touched on the potential for the abuse by Congress of the Spending Power in federal grant-in-aid programs. In holding that ambiguous conditions in a grant-in-aid program were unenforceable, this Court made the following observation concerning the Spending Power:

> [T]he Spending Power is much in the nature of a contract: In return for federal funds, the states agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the Spending Power thus rests on whether the state voluntarily and knowingly accepts the terms of the 'contract.' . . . There can, of course, be no knowing acceptance if a state is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal monies, it must do so unambiguously.

Id. 451 U.S. at 17.

Alabama first contracted with the Secretary of Agriculture to act as his agent to administer the Federal Food Stamp Program in Alabama in 1974. At that time, there was no condition that Alabama forego its right to tax, nor was there any indication that such a condition was forthcoming. After 14 years of operating under these assumptions, during which time the Program has become a vital factor to the well-being of many Alabama citizens, Congress now requires that in order for a state's citizens to continue to receive food stamps, the state must relinquish its right to tax. Common sense says that this is not only unfair, but it is coercive. The sense of fair play which this Court recognized in *Pennhurst* requires that this Court examine Congress' recent and drastic changes in the conditions under the Food Stamp Program.

Serious implications arise from judicial approval of the amendment to the Food Stamp Act. For example, Congress, in order to increase the purchasing power of recipients under the Aid to Families with Dependent Children Program (42 U.S.C. § 601), could amend the Act to require that in order for a citizen within a state to be eligible to participate, the state must not collect sales tax on any purchases made by any AFDC recipients. The same analogy could apply to salaries and benefits of federal employees, military personnel, and bene-

ficiaries of social security benefits. The purpose behind such legislation obviously would be to increase the purchasing power of these recipients of federal benefits at the expense of the states.

III. The Political Process Has Failed To Protect Alabama From Onerous Congressional Legislation.

This Court's most recent discussion of states' rights under the Tenth Amendment appears in *Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). In *Garcia*, this Court was faced with congressional authority exercised under the Commerce Power, not the Spending Power. The decision reversed the holding of *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976) and rejected the prior standard of prohibiting federal regulations that infringed upon integral or traditional functions of state or local governments. This Court declared that the national political process—"the built-in restraints that our system provides through state participation in federal government action"—was a sufficient safeguard to protect states from unduly burdensome congressional action. 469 U.S. at 556. This Court observed, however, that it should impose restraints on the Commerce Clause Powers in instances where it is necessary to compensate for possible failings in the national political process. 469 U.S. at 554. One possible failing that this Court must have had in mind which would call for the protection of the Tenth Amendment is where a minority of states face impossible odds against a disinterested majority of the states in the national political process. The facts in this case illustrate that the political process completely failed to protect the interest of Alabama and the other states adversely affected by this legislation.

On November 21, 1985, Senator Denton of Alabama introduced an amendment which would strike the objec-

tionable amendment from the Act. Only 17 states were adversely affected by the challenged amendment, and Senator Denton's amendment was soundly defeated by a vote of 32 to 67. The Denton amendment had little chance of passage.

Certainly, Congress' reach under the Commerce Power is much greater than under the Spending Power. But even under the stricter standards of the Commerce Power, the objectionable amendment in this case deserves to be inspected by this Court within the ambit of the Tenth Amendment and not to be left to the shortcomings of the national political process. The amendment is even more deserving of review in view of the fact that it is an exercise under the Spending Power. If the Tenth Amendment need ever again be reviewed by this Court, surely it is in the instance where Congress, in the exercise of its Spending Power, invades the states' essential right of taxation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 86-7635

Non-Argument Calendar *

STATE OF ALABAMA,
Plaintiff-Appellant,

v.

RICHARD LYNG, SECRETARY OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE,
Defendant-Appellee,

and

MARY PHILLIPS, ALABAMA COUNCIL ON
HUMAN RELATIONS, INC., and the
NATIONAL ANTI-HUNGER COALITION,
Defendants-Intervenors-Appellees.

March 2, 1987

Appeal from the United States District Court
for the Middle District of Alabama

Before FAY, ANDERSON and EDMONDSON, Circuit Judges.

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* Fed. R. App. P. 34(a); 11th Cir. R. 23.

PER CURIAM:

The judgment appealed is AFFIRMED based upon the Memorandum Opinion entered by the District Court on August 26, 1986 and attached hereto.

MEMORANDUM OPINION

This cause is now before the Court on defendant's motion to dismiss, filed June 30, 1986, and defendant's motion to file its brief one day out of time, filed July 14, 1986. A hearing was held on said motions on July 16, 1986. Having considered the pleadings, motions, and briefs and arguments of the parties, the Court concludes that said motions are due to be granted.

Section 1505 of the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (codified as amended at 7 U.S.C. § 2013(a)(1985)), amended the Food Stamp Act of 1977 to proscribe states that participate in the administration of the Food Stamp Program from collecting state or local sales taxes on items purchased with food stamps. Plaintiff seeks a declaratory judgment that § 1505 is unconstitutional and that the Food Stamp Act requires the Secretary of Agriculture to provide food stamp benefits to all eligible households in Alabama regardless of whether the State of Alabama participates in the administration of the Food Stamp Program. Plaintiff also seeks an injunction preventing implementation of § 1505. Plaintiff contends that in enacting this amendment to the Food Stamp Act, Congress exceeded its spending power authority vested by Article I, Section 8, clause 1 of the United States Constitution, and violated the Tenth Amendment to the Constitution.

Background

The food stamp program was developed to "promote the general welfare, [and] to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011.

The program seeks to accomplish this ideal by enabling low-income households to "obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." *Id.*

The ability of the food stamp program to satisfy the nutritional needs of this nation's poor and hungry has been adversely affected by some states' policies of charging sales tax on food items purchased with food stamps. Only thirteen states prohibit all sales tax on food stamp purchases, and seventeen states have a general sales tax on all such purchases. S.Rep. No. 145, 99th Congr., 1st Sess. 249-51, *reprinted in* 1985 U.S. Code Cong. & Admin. News 1103, 1676, 1915-17. The remaining states charge sales tax on some, but not all food stamp purchases. Alabama charges a flat, four percent tax on all food purchases made with food stamps. Plaintiff also concedes that localities in Alabama charge an average of an additional two percent sales tax on such purchases.

Congress viewed the negative effects of this sales tax on food stamp purchases as twofold. First, Congress concluded the sales tax reduces the purchasing power of food stamp recipients. For example, Alabama's state and local sales taxes reduce the purchasing power of food stamps recipients by six percent. Clearly, Alabama's sales tax substantially hinders the food stamp program's efforts to help the very poor to eat.

Second, Congress felt that state taxation of food stamp purchases results in an indirect federal subsidy to such states because the tax is paid with food stamps. *Id.*, at 252, *reprinted in* 1985 U.S. Code Cong. & Admin.News at 1918. Congress therefore amended the Food Stamp Act to prohibit states that participate in administering the food stamp program from charging sales tax on purchases made with food stamps.

Discussion

Courts have held innumerable times that the federal government may impose conditions on the receipt and use of federal funds. *See, e.g., Pennhurst State School v. Halderman*, 451 U.S. 1, 17, 101 S.Ct. 1531, 1539, 67 L.Ed. 2d 694 (1981) (federal financial aid to states for care of disabled persons); *Fullilove v. Klutznick*, 448 U.S. 448, 474, 100 S.Ct. 2758, 2772, 65 L.Ed.2d 902 (1980) (federal grant conditioned on using 10% for minority business development); *Oklahoma v. United States Civil Service Comm'n*, 330 U.S. 127, 143-44, 67 S.Ct. 544, 553-54, 91 L.Ed. 794 (1974) (highway funds withheld if member of State Highway Commission held office in political party); *Oklahoma v. Schweiker*, 655 F.2d 401 (D.C. Cir. 1981) (Medicaid); *Florida v. Mathews*, 526 F.2d 319 (5th Cir.1976) (Medicaid).

Plaintiff attempts to distinguish these cases on the ground that the federal benefits in such cases were extended directly to the states, which then disbursed the benefits to its citizens. In such cases, the state could refuse the federal aid if it did not want to satisfy the federal government's conditions.

Plaintiff argues that the Food Stamp Program is structured differently from those programs. According to plaintiff's strained interpretation of the statute, the Food Stamp Act creates a direct entitlement in eligible households to food stamps regardless of whether the state helps administer the program. Accordingly, plaintiff contends the federal government can place no conditions whatsoever on its participation in the program because it has no federal benefit to accept or reject. There is no quid pro quo or contractual arrangement.

If plaintiff's interpretation of the statute is correct, its argument that Congress may not place any restrictions on it has some support. For example, in *Oklahoma v. Schweiker*, 655 F.2d 401, 408 (D.C.Cir. 1981), the court stated in dicta:

> Here, Congress' objective could not be realized by amending Title XVI of the [Social Security] Act, the portion relating to [Social Security Insurance (SSI)], because it is individual needy persons, not the states, that are entitled to the funds allocated to the SSI Program. In order to induce the states to pass cost-of-living increases on to aid recipients, Congress deemed it necessary to attach the passthrough condition to the Medicaid provisions of the Act, under which funds are disbursed to the states.

But plaintiff's characterization of the Act is not correct. The Food Stamp Program was designed from its inception in 1964 to be implemented only in states "wishing to take part." H.Rep. No. 271, 99th Cong., 1st Sess. 124, *reprinted in* U.S.Code Cong. & Admin.News 1103, 1228.

More recently, upon passage of the Food Security Act of 1985 which reauthorized the Food Stamp Program for a number of years, Congress reaffirmed its view of its own legislation that "States may opt to offer the Food Stamp Program or not" and that "States remain free to reject this condition to participation in the Food Stamp Program and forego the benefits of the program to its [sic] citizens." S.Rep. No. 145, 99th Cong., 1st Sess. 215 and 252, *reprinted in* U.S.Code Cong. & Ad.News 1676, 1881 and 1918. *See also* H.Rep. No. 271, 99th Cong., 1st Sess. 132, *reprinted in* 1985 U.S.Code Cong. & Admin. News 1103, 1236 ("States and localities *opting to* participate in the Food Stamp Program would be prohibited from collecting sales tax on food stamp purchases." (emphasis added)).

Indeed, the Act's own language as amended clarifies that state's participation in the Food Stamp Program for their citizens' benefit is voluntary. Section 1505 now reads:

> Subject to the availability of funds, . . . the Secretary is authorized to formulate and administer a

> food stamp program under which, at the request of the state agency, eligible households within the state shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, except that a state may not participate in the food stamp program if the Secretary determines that state or local sales taxes are collected within that state on purchases of food made with [food stamps].

Plaintiff finds its only support for its position in 7 U.S.C. § 2011 which states that the goal of the Food Stamp Program is to maintain "national" levels of nutrition in "all eligible households who apply for participation." Plaintiff argues that this language creates an entitlement in *all* eligible households to food stamps, regardless of whether their state participates in the Food Stamp Program. But only eligible households "who apply for participation" may receive food stamps, 7 U.S.C. § 2011, and the Food Stamp Act requires such applications to be filed with the state's food stamp agency, which then requests the federal government to issue the food stamps. 7 U.S.C. § 2013(a). Hence, no "eligible household" may receive food stamps under the Food Stamp Act's dictates unless the state accepts the household's application and then requests the issuance of food stamps. The Secretary of Agriculture is given no authority to issue food stamps without the state's participation in the program. This Court therefore concludes that plaintiff's characterization of the Food Stamp Act as amended by the Food Security Act of 1985 is mistaken, and the prohibition on state and local sales taxes is therefore valid.

Plaintiff argues that those cases allowing Congress to place conditions on state participation in federal aid programs only permit Congress to place limits on a state's spending power as such a condition, and not on a state's power of taxation. Plaintiff therefore argues that the Food Security Act amendment prohibiting states who tax food stamp purchases from participating in the Food

Stamp Program violates the Tenth Amendment to the Constitution.

However, the Tenth Amendment is recognized as but a "truism," *State of Texas v. United States*, 730 F.2d 339, 352 (5th Cir.1984), *citing United States v. Darby*, 312 U.S. 100, 114, 61 S.Ct. 451, 457, 85 L.Ed. 609 (1941), and a state's power to tax is no more fundamental than its power to spend. If anything, Alabama's power to tax in this case is less protected than its power to spend because the sales tax is paid for by 100 percent federally subsidized food stamp coupons. Indeed, defendant makes a persuasive argument that Congress properly and constitutionally exempted food stamp purchases from state taxation because such taxation results in an indirect subsidy to the state. *See, e.g., Dameron v. Brodhead*, 345 U.S. 322, 325, 73 S.Ct. 721, 723, 97 L.Ed. 1041 (1953); *Carson v. Roane-Anderson*, 342 U.S. 232, 236 (1952), 72 S.Ct. 257, 259, 96 L.Ed. 257; *City of Cleveland v. United States*, 323 U.S. 329, 333, 65 S.Ct. 280, 282, 89 L.Ed. 274 (1944). This Court cannot see that the Tenth Amendment is violated simply because an otherwise valid condition on participation in a federal program affects a state's taxing power rather than its spending power.

As a final alternative, plaintiff seeks a delay of this Court's ruling until it has an opportunity to conduct discovery on how defendant has conducted the Food Stamp Program in other states. Because plaintiff has challenged the statute on its face and has raised no equal protection argument, such discovery is irrelevant. Moreover, the language of the statute is plain and the legislative history is clear. Citizens in states which do not participate in the Food Stamp Program cannot be eligible for food stamp coupons. Accordingly, no further delay is warranted, and defendant's motion to dismiss is due to be granted for failure to state a claim upon which relief can be granted.

A separate order will be entered in accordance with this memorandum opinion.

/s/ Truman M. Hobbs
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action No. 86-H-392-N

STATE OF ALABAMA,
Plaintiff

vs.

RICHARD LYNG, Secretary of Agriculture,
Defendant

[Filed Aug. 26, 1986]

MEMORANDUM OPINION

This cause is now before the Court on defendant's motion to dismiss, filed June 30, 1986, and defendant's motion to file its brief one day out of time, filed July 14, 1986. A hearing was held on said motions on July 16, 1986. Having considered the pleadings, motions, and briefs and arguments of the parties, the Court concludes that said motions are due to be granted.

Section 1505 of the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (codified as amended at 7 U.S.C. § 2013(a) (1985)), amended the Food Stamp Act of 1977 to proscribe states that participate in the administration of the Food Stamp Program from collecting state or local sales taxes on items purchased with food stamps. Plaintiff seeks a declaratory judgment that § 1505 is unconstitutional and that the Food Stamp Act

requires the Secretary of Agriculture to provide food stamp benefits to all eligible households in Alabama regardless of whether the State of Alabama participates in the administration of the Food Stamp Program. Plaintiff also seeks an injunction preventing implementation of § 1505. Plaintiff contends that in enacting this amendment to the Food Stamp Act, Congress exceeded its spending power authority vested by Article I, Section 8, clause 1 of the United States Constitution, and violated the Tenth Amendment to the Constitution.

Background

The food stamp program was developed to "promote the general welfare, [and] to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." 7 U.S.C. § 2011. The program seeks to accomplish this ideal by enabling low-income households to "obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." *Id.*

The ability of the food stamp program to satisfy the nutritional needs of this nation's poor and hungry has been adversely affected by some states' policies of charging sales tax on food items purchased with food stamps. Only thirteen states prohibit all sales tax on food stamp purchases, and seventeen states have a general sales tax on all such purchases. S. Rep. No. 145, 99th Congr., 1st Sess. 249-51, *reprinted in* 1985 U.S. Code Cong. & Ad. News 1676, 1915-17. The remaining states charge sales tax on some, but not all, food stamp purchases. Alabama charges a flat, four percent tax on all food purchases made with food stamps. Plaintiff also concedes that localities in Alabama charge an average of an additional two percent sales tax on such purchases.

Congress viewed the negative effects of this sales tax on food stamp purchases as twofold. First, Congress con-

cluded the sales tax reduces the purchasing power of food stamp recipients. For example, Alabama's state and local sales taxes reduce the purchasing power of food stamps recipients by six percent. Clearly, Alabama's sales tax substantially hinders the food stamp program's efforts to help the very poor to eat.

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Plaintiff attempts to distinguish these cases on the ground that the federal benefits in such cases were extended directly to the states, which then disbursed the benefits to its citizens. In such cases, the state could refuse the federal aid if it did not want to satisfy the federal government's conditions.

Plaintiff argues that the Food Stamp Program is structured differently from those programs. According

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But plaintiff's characterization of the Act is not correct. The Food Stamp Program was designed from its inception in 1964 to be implemented only in states "wishing to take part." H. Rep. No. 271, 99th Cong., 1st Sess. 124, *reprinted in* U.S. Code Cong. & Ad. News 1103, 1228.

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Indeed, the Act's own language as amended clarifies that state's participation in the Food Stamp Program for their citizens' benefit is voluntary. Section 1505 now reads:

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Plaintiff finds its only support for its position in 7 U.S.C. § 2011 which states that the goal of the Food Stamp Program is to maintain "national" levels of nutrition in "all eligible households who apply for participation." Plaintiff argues that this language creates an entitlement in *all* eligible households to food stamps, regardless of whether their state participates in the Food Stamp Program. But only eligible households "who apply for participation" may receive food stamps, 7 U.S.C. § 2011, and the Food Stamp Act requires such applications to be filed with the state's food stamp agency, which then requests the federal government to issue the food stamps. 7 U.S.C. § 2013(a). Hence, no "eligible house-

hold" may received food stamps under the Food Stamp Act's dictates unless the state accepts the household's application and then requests the issuance of food stamps. The Secretary of Agriculture is given no authority to issue food stamps without the state's participation in the program. This Court therefore concludes that plaintiff's characterization of the Food Stamp Act as amended by the Food Security Act of 1985 is mistaken, and the prohibition on state and local sales taxes is therefore valid.

Plaintiff argues that those cases allowing Congress to place conditions on state participation in federal aid programs only permit Congress to place limits on a state's spending power as such a condition, and not on a state's power of taxation. Plaintiff therefore argues that the Food Security Act amendment prohibiting states who tax food stamp purchases from participating in the Food Stamp Program violates the Tenth Amendment to the Constitution.

However, the Tenth Amendment is recognized as but a "truism," *State of Texas v. United States*, 730 F.2d 339, 352 (5th Cir. 1984), *citing United States v. Darby*, 312 U.S. 100, 114 (1941), and a state's power to tax is no more fundamental than its power to spend. If anything, Alabama's power to tax in this case is less protected than its power to spend because the sales tax is paid for by 100 percent federally subsidized food stamp coupons. Indeed, defendant makes a persuasive argument that Congress properly and constitutionally exempted food stamp purchases from state taxation because such taxation results in an indirect subsidy to the state. *See, e.g., Dameron v. Brodhead*, 345 U.S. 322, 325 (1953); *Carson v. Roane-Anderson*, 342 U.S. 232, 236 (1952); *City of Cleveland v. United States*, 323 U.S. 329, 333 (1944). This Court cannot see that the Tenth Amendment is violated simply because an otherwise valid condition on participation in a federal program affects a state's taxing power rather than its spending power.

As a final alternative, plaintiff seeks a delay of this Court's ruling until it has an opportunity to conduct discovery on how defendant has conducted the Food Stamp Program in other states. Because plaintiff has challenged the statute on its face and has raised no equal protection argument, such discovery is irrelevant. Moreover, the language of the statute is plain and the legislative history is clear. Citizens in states which do not participate in the Food Stamp Program cannot be eligible for food stamp coupons. Accordingly, no further delay is warranted, and defendant's motion to dismiss is due to be granted for failure to state a claim upon which relief can be granted.

A separate order will be entered in accordance with this memorandum opinion.

DONE this 26th day of August, 1986.

/s/ Truman Hobbs
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action No. 86-H-392-N

STATE OF ALABAMA,

Plaintiff

vs.

RICHARD LYNG, Secretary of Agriculture,

Defendant

[Filed Aug. 26, 1986]

ORDER

In accordance with the attached memorandum opinion, it is ORDERED that:

1. Defendant's motion to dismiss, filed June 30, 1986, is hereby granted, and this case is dismissed.

2. Defendant's motion, filed July 14, 1986, for leave to file his brief one day late is granted.

It is noted for the record that the motion to intervene, filed June 11, 1986 by Mary Phillips on behalf of her household, the Alabama Council on Human Relations, Inc. and the National Anti-Hunger Coalition was granted in open court on July 16, 1986.

DONE this 26th day of August, 1986.

/s/ Truman Hobbs
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-7635

Non-Argument Calendar

D.C. Docket No. 86-392

STATE OF ALABAMA
Plaintiff-Appellant,

versus

RICHARD LYNG, SECRETARY OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE,
Defendant-Appellee,

and

MARY PHILLIPS, ALABAMA COUNCIL ON
HUMAN RELATIONS, INC. and
THE NATIONAL ANTI-HUNGER COALITION,
Defendants-Intervenors-Appellees.

Appeal from the United States District Court for the
Middle District of Alabama

Before FAY, ANDERSON and EDMONDSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered:

March 2, 1987

For the Court:

Miguel J. Cortez
Clerk

By: /s/ David Malaud
Deputy Clerk

ISSUED AS MANDATE: Apr. 3, 1987

APPENDIX E

UNITED STATES CONSTITUTION

ARTICLE I, SECTION 8, CLAUSE 1

The Congress shall have the power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports and excises shall be uniform throughout the United States;

APPENDIX F

UNITED STATES CONSTITUTION

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.